

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Date 5-28-96

Person to Contact [REDACTED]

Telephone Number [REDACTED]

Refer Reply to: [REDACTED]

Date

APR 18 1996

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the "Code") as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

In this letter we do not discuss your original request for classification as a church. With your original application for recognition of exemption you submitted Schedule A ("Churches"), upon which you typed "[REDACTED] is not a church, but a church related organization." You formally withdrew your request for classification as a church by letter to the Service, dated [REDACTED]. In that letter you requested classification as a section 509(a)(1) publicly supported organization. Accordingly, in this letter we discuss only your failure to meet the requirements imposed by section 509(a)(1) of the Code. In passing we note that since you answered almost every question on Schedule A with "N/A", you have none of the typical indicia of a church.

The information submitted indicates that you were incorporated on [REDACTED], under the [REDACTED] Non-profit Corporation Act, even though your application states erroneously that you were incorporated on [REDACTED].

Article Three of your Articles of Incorporation states that you were organized "[t]o make access available to the churches of Christ for the opportunity to broadcast Bible programs to the community and to make available community, school and area interest programs."

[REDACTED]

You amended Article Three of your Articles of Incorporation on [REDACTED]. Amended Article Three states that "[t]he purposes for which the Corporation is organized are exclusively religious, charitable, scientific, literary, and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code . . . and are further limited to the following: To make access available to the churches of Christ for the opportunity to broadcast Bible programs to the community and to make available community, school and area public interest programs."

You further amended your Articles on [REDACTED], to provide a satisfactory dissolution clause dedicating your assets, upon dissolution, to the federal or local government for a public purpose.

In your application you state that you are operating a low powered television station to broadcast religious sermons to a local audience within a [REDACTED] mile radius of [REDACTED]. You also describe a secondary purpose, which is broadcasting high school sports events and other events of interest to local citizens. In your cover letter to the Service you report that "100% of our time and funds are devoted to increasing our viewing audience to present the Gospel message to more people."

In your correspondence with the Service, you have consistently maintained that "Gospel programming takes a majority of the air time" (undated letter, received [REDACTED]) and that "a majority of the broadcasting is religious programming" (undated letter, received [REDACTED]).

In addition, in an undated letter to Congressman [REDACTED], you state that "the majority of our broadcasting is religious with several programs per day."

Your application states that you broadcast 24 hours per day, seven days per week. You state that you broadcast five to seven religious programs per day, each program lasting between 30 and 60 minutes in length. You conclude: "So you can see a sizeable portion of the day is religious broadcasting, hopefully without being overwhelming to the viewers or causing them to turn us off."

With your correspondence to the Service, however, you have attached several exemplar program guides. An analysis of the submitted guides shows that your average programming day consists of three and one-half hours of religious programming. On most days you broadcast only two hours of religious themed programming; on Sunday you broadcast nine hours of religious

[REDACTED]

themed programming. In addition, an average programming day consists of approximately seven and one-half hours of other scheduled material, which you refer to as material of local interest. Thus more half of your broadcast day is dedicated to paid commercial advertising and free classified advertisements for local residents. In addition, it appears that you regularly broadcast religious sermons of two of your founding directors.

The financial information you submitted with your application shows that █% of your gross income for █ (your first full tax year) comes from paid commercial advertisements. In addition, your proposed budgets for █ and █ indicate that you anticipate over █% of your gross income to come from paid commercial advertisements.

You have █ full time employees. One of your employees dedicates all his time to "selling, filming and producing commercials." He is paid on a commission basis. On your behalf he has developed █ market plans for marketing commercials, Plans "█" through "█". Plan █, for example, is the most extensive and offers █ commercials per month (or █ per day). Plan █, one of the less expensive, offers merely █ spots per hour, written words only, no video. The information submitted also indicates that various "video packages" are available, but no information was submitted as part of your application. You admit that the advertisement rate schedule is competitive with local commercial radio advertising.

Based upon the information you have given us, you have minimal public support. With respect to █, your first year of operation, you state that you have no records documenting the \$█ you claim was given to you. With respect to █ (and disregarding the above-mentioned \$█ you erroneously attribute to █ and then again to █ because you did not spend it in █), it appears that almost █% of your █ total contributions came from your officers or directors. For the following years, in which you have proposed public support totalling less than █ percent of your gross income, you intend to solicit no contributions. Your policy, as stated in your application and in various letters to the Service, is that "we will not ask the public for money" and "we do not plan to solicit funds from anyone."

In a letter from the District, dated █, you were informed of the holding in Rev. Rul. 78-385, infra, which holds that an organization that broadcasts religious and educational programs for all but an insubstantial amount of its broadcast time is entitled to exemption. In your response to the Service (undated), you state that Rev. Rul. 78-385 "would seem to

[REDACTED]

support our claim for tax exempt status because none of our contributed time and funds are devoted to a commercial activity." And in the letter to Congressman [REDACTED], you state that "we do not believe that the paid advertising, in any way, violates this original purpose."

In response to the District's query about the extent of your paid commercial advertising, you responded in a letter, dated [REDACTED]:

"If you broadcast only gospel messages that are based on the principles of the Bible, your viewers will be only members of your church. Our approach is to get the attention of non-members but to do this we must be subtle or indirect. Our indirect approach is to video record and replay high school sports events to get the parents and relatives of the kids participating in these events to watch our station. Hopefully, they will, also, watch some of the messages that are presented and will eventually obey the Gospel."

Section 501(c)(3) of the Code provides exemption from Federal income taxation for organizations organized and operated exclusively for one or more of the exempt purposes listed in that section, provided that no part of the net earnings of the organization inures to the benefit of any private individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (the "Regulations") provides that in order for an organization to be exempt under section 501(c)(3) of the Code, the organization must be both organized and operated exclusively for one or more of the purposes specified in such section. An organization that fails to meet either the organizational or the operational test does not qualify for exemption.

Section 1.501(c)(3)-1(b)(1) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes, and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides, in part, that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such purposes described in section 501(c)(3) of the Code, but will not

be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the corporation, or persons controlled, directly or indirectly by such private interests. Exemption under section 501(c)(3) of the Code is granted to an organization in recognition of the benefit which the public derives from the performance of the organization's activities.

Section 1.501(c)(3)-1(d)(2) of the Regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. Such term includes advancement of religion and advancement of education or science.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 509(a)(1) of the Code excludes from the definition of private foundation certain organizations described in section 170(b)(1)(A).

Section 170(b)(1)(A)(vi) provides that to be described therein, an organization must normally receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis of its exemption under section 501(a)) from a governmental unit or from direct or indirect contributions from the general public.

Section 511(a) imposes a tax on the unrelated business taxable income of organizations otherwise exempt from tax under section 501(c)(3).

Section 513(a) defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of an organization for income or funds or the use it makes of the profits derived) to the exercise or performance by an organization of its exempt functions. See also Regulation section 1.513-1(a).

Section 513(c), entitled "Advertising, etc, activities," provides in part that an activity does not lose its identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization.

Section 1.513-1(b) of the Regulations provides in part that the activities of soliciting, selling and publishing commercial advertising do not lose identity as a trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization.

Example (4) of section 1.513-1(d)(4)(iv) states in part that

"X, an exempt organization for the advancement of public interest in classical music, owns a radio station and operates it in a manner which contributes importantly to the accomplishment of the purposes for which the organization is granted exemption. However, in the course of the operation of the station the organization derives gross incomes from the regular sale of advertising time and services to commercial advertisers in the manner of an ordinary commercial station. Neither the sale of such time nor the performance of such services contributes importantly to the accomplishment of any purpose for which the organization is granted exemption."

Rev. Rul. 66-220, 1966-2 C.B. 209, holds that a nonprofit corporation organized exclusively for educational purposes to operate a noncommercial educational broadcasting station presenting educational, cultural and public interest programs is exempt under section 501(c)(3) of the Code. The organization sells no broadcasting time for commercial use. Its sources of income are contributions from individuals, corporations, exempt organizations, local government agencies and receipts from the sale of a monthly program guide. This revenue ruling's list of income sources does not include any income from the sale of advertisements.

Rev. Rul. 67-5, 1967-1 C.B. 123, concerned a foundation controlled by its creator's family and operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation. The Service concluded that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family.

Rev. Rul. 68-563, 1968-2 C.B. 212, amplified by Rev. Rul. 78-385, infra, holds that a nonprofit religious broadcasting station that does not sell commercial or advertising time is exempt under section 501(c)(3) even though it operates under a commercial broadcasting license from the Federal Communications Commission. The organization is supported by contributions from its listening audience and amounts donated by other organizations. The organization dedicated all of its broadcasting time to religious and inspirational programs.

Rev. Rul. 77-42, 1977-1 C.B. 142, holds that a nonprofit organization that sets up closed-circuit radio transmitting equipment in multiple residence structures such as nursing homes, rest homes and convalescent homes, providing senior citizens within the buildings an opportunity to listen to free, non-commercial and educational broadcasts concerning their special needs, qualifies for exemption under section 501(c)(3). The organization's programming contains no commercial advertising. It receives its support in the form of grants from governmental units and charitable organizations.

Rev. Rul. 78-385, 1978-2 C.B. 175, modifying Rev. Rul. 68-563, supra, holds that an organization that broadcasts religious and educational programs for all but an insubstantial amount of its broadcast time from a television station it owns and operates qualifies for exemption under section 501(c)(3). The organization is supported by contributions from the general public and receipts from the commercially sponsored programs. The Ruling also states that the presentation of commercial programs and the sale of advertising for air time in connection therewith are not substantially related to the purposes forming the basis for the exemption of the organization. Accordingly, the income from the unrelated programs constituted unrelated business income within the meaning of section 513 of the Code.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court of the United States held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In United States v. American College of Physicians, 106 S. Ct. 1591 (1986), the Supreme Court held that advertising contained in an exempt organization's educational journal was not substantially related to its exempt educational purpose. The Court stated: "Congress has declared unambiguously that the publication of paid advertising is a trade or business activity distinct from the publication of accompanying educational articles."

[REDACTED]

In order to establish exemption under section 501(a) of the Code as an organization described in section 501(c)(3), you must demonstrate that (i) you are organized exclusively for charitable purposes, (ii) you are operated exclusively for charitable purposes, and (iii) you are not operated for the benefit of private interests, such as those of your creator or his family.

Following the amendments to your Articles of Incorporation, you appear to meet the organizational test under section 501(c)(3) of the Code. You fail, however, to meet the operational test under that section 501(c)(3). Further, you have not demonstrated that you are not operating for the benefit of private interests in violation of section 501(c)(3). In addition, you have failed to demonstrate that you would have met the public support test for classification as a publicly supported organization within the meaning of section 509(a)(1).

Consideration of the your actual operations indicates that your primary purpose is operating a commercial television station. Your programming consists primarily of advertisements. Less than [REDACTED] of your programming time is regularly dedicated to religious materials. In total, less than [REDACTED] of your programming is scheduled programming that is not advertising. All but an insubstantial part of your actual and proposed gross income is generated by the sale, filming and production of paid commercials. [REDACTED] of your [REDACTED] employees dedicates all his time to selling and producing the commercials you broadcast. Your advertising rates are competitive with the rates of other local stations. In short, your programming is indistinguishable from the commercial programming of the many television and cable stations which are dedicated primarily to broadcasting advertisements of shopping possibilities. Your activities are nothing like any of the organizations recognized exempt in the Revenue Rulings discussed above because of your extensive commercial advertising. Because your activities are indistinguishable from ordinary commercial activities, it cannot be said that your operations are conducted primarily as a means of carrying out an exempt purpose. Rather, your primary purpose appears to be the propagation of commercial advertising.

It is true that there is generic language in your Articles and repeated statements in your correspondence to the Service and others which, standing alone, would seem to indicate that your purposes include religious purposes. However, such statements are overshadowed by the overwhelmingly commercial nature of your broadcasting and the fact that all the information you submitted flatly contradicts your claim that the "majority" of your broadcasting time is dedicated to religious broadcasting. In addition, even in light of the fact that you do broadcast some

religious programming, you have failed to demonstrate that you are operated exclusively for religious purposes as the Code requires.

In your application and in your correspondence with the Service, you state over and over again that you believe you are entitled to exemption because you make no profit. The mere fact that you are not organized for the profit of your directors, officers or creators and do not expect to be profitable in your early years of operation does not qualify you as an exempt organization.

In light of the fact that a substantial part of your religious programming consists of broadcasting the sermons of [REDACTED] of your founders and that substantially all your public support comes from your founders, and in the absence of contrary facts, the implication arises that you are operated for the benefit of your founders. If that benefit is more than incidental, it may violate the private benefit restriction contained in section 501(c)(3) of the Code.

In addition, you state that you will not ask the general public for donations. Broad public support, however, is a requirement for organizations seeking classification as a publicly supported organization under section 509(a)(1) of the Code. Without public support, you would have to be classified as a private foundation and additional restrictions, such as the prohibition on self-dealing contained in section 4941 of the Code, would become applicable. Because we are not recognizing your exemption from federal income tax, it is not necessary to discuss this matter further.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns as a taxable corporation.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that

[REDACTED]

person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district-- office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite our receipt of them by using the following address:

Internal Revenue Service
[REDACTED]
1111 Constitution Ave., N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Technical Branch 3